

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WILDEARTH GUARDIANS and SIERRA
CLUB,

Plaintiffs,

v.

LISA P. JACKSON, in her official capacity
as Administrator, United States
Environmental Protection Agency,

Defendant.

Case No. 3:11-cv-00190-WHA

CONSENT DECREE

WHEREAS, on July 6, 2011, Plaintiffs Sierra Club and WildEarth Guardians filed an amended complaint (“Complaint”) in this matter against Defendant Lisa P. Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), alleging that EPA has failed to undertake certain nondiscretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and that such alleged failure is actionable under section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

WHEREAS, Plaintiffs alleged that EPA has failed to perform a duty mandated by CAA section 110(k)(2) and (3), 42 U.S.C. § 7410(k)(2) and (3), to take final action on the SIP submittals or portions of submittals meeting applicable requirements of CAA section 110(a)(2), 42 U.S.C. § 7410(a)(2), for Alabama, Connecticut, Florida, Mississippi, North Carolina, Tennessee, Indiana, Maine, Ohio, New Mexico, Delaware, Kentucky, Nevada, Arkansas, New

Consent Decree
No. 3:11-cv-00190-WHA

1 Hampshire, South Carolina, Massachusetts, Arizona, Georgia and West Virginia with regard to
2 the 2006 PM2.5 NAAQS;

3 WHEREAS, the term "2006 PM2.5 NAAQS infrastructure SIP" means for the purposes
4 of this Consent Decree only a submission or multiple submissions addressing the applicable
5 requirements of section 110(a)(2), 42 U.S.C. § 7410(a)(2), not including the portions of CAA
6 section 110(a)(2)(C) pertaining to nonattainment area requirements or section 110(a)(2)(I), 42
7 U.S.C. §§ 7410(a)(2)(C), (a)(2)(I);

9 WHEREAS, for the purposes of this Consent Decree only, the term "2006 PM2.5
10 NAAQS infrastructure SIP" does not include the portions of CAA section 110(a)(2)(D)(i)(II), 42
11 U.S.C. § 7410(a)(2)(D)(i)(II), pertaining to visibility requirements;

13 WHEREAS, the parties agree for the purposes of this Consent Decree only that the
14 obligations set out below do not include EPA taking any actions regarding the portions of section
15 110(a)(2)(C) pertaining to nonattainment area requirements sections, the portions of section
16 110(a)(2)(D)(i)(II) pertaining to visibility requirements, or section 110(a)(2)(I);

18 WHEREAS, the parties have agreed to settle this action without admission of any issue
19 of fact or law;

21 WHEREAS, the parties, by entering into this Consent Decree, do not waive or limit any
22 claim or defense, on any grounds, related to any final EPA action;

23 WHEREAS, the parties consider this Consent Decree to be an adequate and equitable
24 resolution of all of claims in this matter;

26 WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve
27 this matter without protracted litigation;

1 NOW THEREFORE, before the taking of testimony, without trial or determination of
 2 any issue of fact or law, and upon the consent of the parties, it is hereby ordered, adjudged and
 3 decreed that:

4 1. This Court has jurisdiction over this matter pursuant to the citizen suit provision
 5 in section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2), and venue lies in the Northern District
 6 of California.
 7

8 2. The Court, by entering this Consent Decree, finds that the Consent Decree is fair,
 9 reasonable, in the public interest, and consistent with the CAA.

10 3. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
 11 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
 12 Agency's final action either approving, disapproving, or approving in part and disapproving in
 13 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Alabama addressing the applicable
 14 requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
 15 requirements under section 110(a)(2)(C) and the visibility requirements under section
 16 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for Alabama is
 17 specifically identified in Chart "A" attached hereto.
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20 4. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
 21 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
 22 Agency's final action either approving, disapproving, or approving in part and disapproving in
 23 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Connecticut addressing the
 24 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for section
 25 110(a)(2)(D)(i)(I), the nonattainment area requirements under section 110(a)(2)(C), and the
 26 visibility requirements under section 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS
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1 Infrastructure SIP submission(s) for Connecticut is specifically identified in Chart “A” attached
2 hereto.

3 5. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
4 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
5 Agency’s final action either approving, disapproving, or approving in part and disapproving in
6 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Florida addressing the applicable
7 requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
8 requirements under section 110(a)(2)(C) and the visibility requirements under section
9 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for Florida is
10 specifically identified in Chart “A” attached hereto.
11

12 6. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
13 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
14 Agency’s final action either approving, disapproving, or approving in part and disapproving in
15 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Mississippi addressing the
16 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
17 requirements under section 110(a)(2)(C) and the visibility requirements under section
18 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for Mississippi is
19 specifically identified in Chart “A” attached hereto.
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21 7. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
22 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
23 Agency’s final action either approving, disapproving, or approving in part and disapproving in
24 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for North Carolina addressing the
25 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
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1 requirements under section 110(a)(2)(C) and the visibility requirements under section
2 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for North
3 Carolina is specifically identified in Chart “A” attached hereto.

4 8. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
5 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
6 Agency’s final action either approving, disapproving, or approving in part and disapproving in
7 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Tennessee addressing the
8 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for section
9 110(a)(2)(D)(i)(I), the nonattainment area requirements under section 110(a)(2)(C), and the
10 visibility requirements under section 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS
11 Infrastructure SIP submission(s) for Tennessee is specifically identified in Chart “A” attached
12 hereto.

13 9. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
14 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
15 Agency’s final action either approving, disapproving, or approving in part and disapproving in
16 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Indiana addressing the applicable
17 requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
18 requirements under section 110(a)(2)(C) and the visibility requirements under section
19 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for Indiana is
20 specifically identified in Chart “A” attached hereto.

21 10. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
22 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
23 Agency’s final action either approving, disapproving, or approving in part and disapproving in
24

1 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Maine addressing the applicable
 2 requirements of sections 110(a)(2)(A)-(C), (D)(i)(I), (E)-(H), (J)-(M), except for the
 3 nonattainment area requirements under section 110(a)(2)(C). The 2006 PM2.5 NAAQS
 4 Infrastructure SIP submission(s) for Maine is specifically identified in Chart "A" attached hereto.

5 11. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
 6 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
 7 Agency's final action either approving, disapproving, or approving in part and disapproving in
 8 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Ohio addressing the applicable
 9 requirements of sections 110(a)(2)(A)-(C), (D)(i)(I), (E)-(H), (J)-(M), except for the
 10 nonattainment area requirements under section 110(a)(2)(C). The 2006 PM2.5 NAAQS
 11 Infrastructure SIP submission(s) for Ohio is specifically identified in Chart "A" attached hereto.

12 12. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall sign for
 13 publication in the Federal Register:

- 14 a. no later than September 30, 2012, a notice or notices of the Agency's proposed
 15 action either approving, disapproving, or approving in part and disapproving in
 16 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for New Mexico
 17 addressing the applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M),
 18 except for the nonattainment area requirements under section 110(a)(2)(C), the
 19 requirements under section 110(a)(2)(D)(i)(I), and the visibility requirements
 20 under section 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP
 21 submission(s) for New Mexico is specifically identified in Chart "A" attached
 22 hereto; and
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- 1 b. no later than January 14, 2013, a notice or notices of the Agency's final action
2 either approving, disapproving, or approving in part and disapproving in part the
3 2006 PM2.5 NAAQS Infrastructure SIP submittal for New Mexico addressing the
4 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the
5 nonattainment area requirements under section 110(a)(2)(C), the requirements
6 under section 110(a)(2)(D)(i)(I), and the visibility requirements under section
7 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s)
8 for New Mexico is specifically identified in Chart "A" attached hereto.
9
- 10 13. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall sign for
11 publication in the Federal Register:
12
- 13 a. no later than February 28, 2013, a notice or notices of the Agency's proposed
14 action either approving, disapproving, or approving in part and disapproving in
15 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for New Mexico
16 addressing the applicable significant contribution to nonattainment and
17 interference with maintenance requirements of section 110(a)(2)(D)(i)(I). The
18 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for New Mexico is
19 specifically identified in Chart "A" attached hereto; and
20
- 21 b. no later than August 30, 2013, a notice or notices of the Agency's final action
22 either approving, disapproving, or approving in part and disapproving in part the
23 2006 PM2.5 NAAQS Infrastructure SIP submittal for New Mexico addressing the
24 applicable significant contribution to nonattainment and interference with
25 maintenance requirements of section 110(a)(2)(D)(i)(I). The 2006 PM2.5
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1 NAAQS Infrastructure SIP submission(s) for New Mexico is specifically
 2 identified in Chart “A” attached hereto.

3 14. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
 4 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
 5 Agency’s final action either approving, disapproving, or approving in part and disapproving in
 6 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Delaware addressing the PSD
 7 requirements under 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP
 8 submission(s) for Delaware is specifically identified in Chart “A” attached hereto.
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10 15. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
 11 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
 12 Agency’s final action either approving, disapproving, or approving in part and disapproving in
 13 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Kentucky addressing the
 14 applicable requirements of sections 110(a)(2)(A)-(C), D(i)(II), (E)-(H), (J)-(M), except for the
 15 nonattainment area requirements under section 110(a)(2)(C) and the visibility requirements
 16 under section 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for
 17 Kentucky is specifically identified in Chart “A” attached hereto.
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20 16. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
 21 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
 22 Agency’s final action either approving, disapproving, or approving in part and disapproving in
 23 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Nevada addressing the applicable
 24 requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
 25 requirements under section 110(a)(2)(C) and the visibility requirements under section
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1 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for Nevada is
 2 specifically identified in Chart "A" attached hereto.

3 17. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall sign for
 4 publication in the Federal Register:

- 5 a. no later than January 31, 2012, a notice or notices of the Agency's proposed
 6 action either approving, disapproving, or approving in part and disapproving in
 7 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Arkansas
 8 addressing the applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M),
 9 except for the nonattainment area requirements under section 110(a)(2)(C),
 10 section 110(a)(2)(D)(i)(I), and the visibility requirements under section
 11 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s)
 12 for Arkansas is specifically identified in Chart "A" attached hereto; and
 13
 14 b. no later than July 31, 2012, a notice or notices of the Agency's final action either
 15 approving, disapproving, or approving in part and disapproving in part the 2006
 16 PM2.5 NAAQS Infrastructure SIP submittal for Arkansas addressing the
 17 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the
 18 nonattainment area requirements under section 110(a)(2)(C), section
 19 110(a)(2)(D)(i)(I), and the visibility requirements under section
 20 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s)
 21 for Arkansas is specifically identified in Chart "A" attached hereto.
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 26 18. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall sign for
 27 publication in the Federal Register:
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1 a. no later than April 30, 2013, a notice or notices of the Agency's proposed action
 2 either approving, disapproving, or approving in part and disapproving in part the
 3 2006 PM2.5 NAAQS Infrastructure SIP submittal for Arkansas addressing the
 4 applicable significant contribution to nonattainment and interference with
 5 maintenance requirements of section 110(a)(2)(D)(i)(I). The 2006 PM2.5
 6 NAAQS Infrastructure SIP submission(s) for Arkansas is specifically identified in
 7 Chart "A" attached hereto; and

9 b. no later than October 31, 2013, a notice or notices of the Agency's final action
 10 either approving, disapproving, or approving in part and disapproving in part the
 11 2006 PM2.5 NAAQS Infrastructure SIP submittal for Arkansas addressing the
 12 applicable significant contribution to nonattainment and interference with
 13 maintenance requirements of section 110(a)(2)(D)(i)(I). The 2006 PM2.5
 14 NAAQS Infrastructure SIP submission(s) for Arkansas is specifically identified in
 15 Chart "A" attached hereto.

17 19. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
 18 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
 19 Agency's final action either approving, disapproving, or approving in part and disapproving in
 20 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for New Hampshire addressing the
 21 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
 22 requirements under section 110(a)(2)(C) and the visibility requirements under section
 23 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for New
 24 Hampshire is specifically identified in Chart "A" attached hereto.
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1 20. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
2 than September 30, 2012, sign for publication in the Federal Register of the Agency's final
3 action a notice or notices either approving, disapproving, or approving in part and disapproving
4 in part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for South Carolina addressing the
5 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
6 requirements under section 110(a)(2)(C) and the visibility requirements under section
7 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS Infrastructure SIP submission(s) for South
8 Carolina is specifically identified in Chart "A" attached hereto.
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10 21. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
11 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
12 Agency's final action either approving, disapproving, or approving in part and disapproving in
13 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Massachusetts addressing the
14 applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for section
15 110(a)(2)(D)(i)(I), the nonattainment area requirements under section 110(a)(2)(C), and the
16 visibility requirements under section 110(a)(2)(D)(i)(II). The 2006 PM2.5 NAAQS
17 Infrastructure SIP submission(s) for Massachusetts is specifically identified in Chart "A"
18 attached hereto.
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21 22. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
22 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
23 Agency's final action either approving, disapproving, or approving in part and disapproving in
24 part the 2006 PM2.5 NAAQS Infrastructure SIP submittal for Arizona addressing the applicable
25 requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for section 110(a)(2)(G), the
26 nonattainment area requirements under section 110(a)(2)(C), and the visibility requirements
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1 under section 110(a)(2)(D)(i)(II). The 2006 PM_{2.5} NAAQS Infrastructure SIP submission(s) for
2 Arizona is specifically identified in Chart “A” attached hereto.

3 23. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
4 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
5 Agency’s final action either approving, disapproving, or approving in part and disapproving in
6 part the 2006 PM_{2.5} NAAQS Infrastructure SIP submittal for Georgia addressing the applicable
7 requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for the nonattainment area
8 requirements under section 110(a)(2)(C) and the visibility requirements under section
9 110(a)(2)(D)(i)(II). The 2006 PM_{2.5} NAAQS Infrastructure SIP submission(s) for Georgia is
10 specifically identified in Chart “A” attached hereto.
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12 24. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA shall no later
13 than September 30, 2012, sign for publication in the Federal Register a notice or notices of the
14 Agency’s final action either approving, disapproving, or approving in part and disapproving in
15 part the 2006 PM_{2.5} NAAQS Infrastructure SIP submittal for West Virginia addressing the
16 applicable PSD requirements of section 110(a)(2)(D)(i)(II). The 2006 PM_{2.5} NAAQS
17 Infrastructure SIP submission(s) for West Virginia is specifically identified in Chart “A”
18 attached hereto.
19

20 25. Within 15 business days after taking each action required in Paragraphs 3-24,
21 EPA shall send notice of such action to the Office of the Federal Register for review and
22 publication.
23

24 26. The parties may extend the deadlines set forth in Paragraphs 3-25 and 33 by
25 written stipulation executed by counsel and filed with the Court. If the parties do not agree to an
26 extension, either party may move the Court for an extension.
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1 27. The parties will file a joint request to the Court to dismiss this matter with
2 prejudice within 15 business days after notice appears in the Federal Register of EPA taking the
3 last rulemaking action required under Paragraphs 3-24 of this Consent Decree.

4 28. Nothing in this Consent Decree shall be construed to limit or modify the
5 discretion accorded EPA by the CAA and by general principles of administrative law, including
6 the discretion to alter, amend or revise any responses and/or actions contemplated by this
7 Consent Decree. EPA's obligation to take the actions set forth in Paragraphs 3-25 by the time
8 specified therein does not constitute a limitation or modification of EPA's discretion within the
9 meaning of this paragraph.
10

11 29. Nothing in this Consent Decree shall be construed to confer upon the district court
12 jurisdiction to review any issues that are within the exclusive jurisdiction of the United States
13 Courts of Appeals pursuant to sections 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).
14

15 30. The Court shall retain jurisdiction to enforce the terms of this Consent Decree and
16 to consider any requests for costs of litigation, including attorneys' fees.
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18 31. In the event of a dispute between the parties concerning the interpretation or
19 implementation of any aspect of this Consent Decree, the party that raised the dispute shall
20 provide the other party with a written notice outlining the nature of the dispute and requesting
21 informal negotiations. If the parties cannot reach an agreed-upon resolution within ten (10)
22 business days after receipt of notice, the party that raised the dispute may move the Court to
23 resolve the dispute.
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25 32. No motion or other proceeding seeking to enforce this Consent Decree shall be
26 considered properly filed unless the moving party has followed the procedure set forth in
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1 Paragraph 31 and has provided the non-moving party with written notice received at least ten
2 (10) business days before the filing of such motion or proceeding.

3 33. EPA agrees that, pursuant to section 304(d) of the CAA, 42 U.S.C. § 7604(d),
4 Plaintiffs are both eligible and entitled to recover their costs of litigation in this action, including
5 reasonable attorneys' fees, incurred prior to entry of this Consent Decree. The deadline for filing
6 a bill of costs pursuant to Local Rule 54-1 and a motion for costs of litigation, including
7 reasonable attorneys' fees, pursuant to Local Rule 54-6 for activities performed in this case prior
8 to entry of this Consent Decree is hereby extended until 90 days after the date on which the
9 Court enters this Consent Decree. During this time the parties shall seek to resolve informally
10 any claim for costs of litigation, including reasonable attorneys' fees.
11

12 34. The obligations imposed by EPA under this Consent Decree may only be
13 undertaken using appropriated funds. No provisions of this Consent Decree shall be interpreted
14 as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of
15 the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal law.
16

17 35. Plaintiffs and EPA shall not challenge the terms of this Consent Decree or this
18 Court's jurisdiction to enter this Consent Decree.
19

20 36. The parties agree and acknowledge that before this Consent Decree is entered by
21 the Court, EPA must provide notice of this Consent Decree in the Federal Register and an
22 opportunity for public comment pursuant to section 113(g) of the CAA, 42 U.S.C. § 7413(g).
23 After this Consent Decree has undergone notice and comment, the Administrator and/or the
24 Attorney General, as appropriate, shall promptly consider any such written comments in
25 determining whether to withdraw or withhold their consent to the Consent Decree, in accordance
26 with section 113(g) of the CAA. If the Administrator and/or the Attorney General do not elect to
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1 withdraw or withhold their consent, EPA shall promptly file a motion that requests the Court to
2 enter this Consent Decree.

3 37. Any notices required or provided for by this Consent Decree shall be made in
4 writing, via facsimile, e-mail or other means, and sent to the following:

5 For Plaintiffs:

6 Robert Ukeiley
7 Law Office of Robert Ukeiley
8 435R Chestnut Street, Suite 1
9 Berea, KY 40403
10 Tel: 859-986-5402
11 Fax: 866-618-1017
12 rukeiley@igc.org

13 For Defendant:

14 Michelle R. Lambert
15 Trial Attorney
16 U.S. Department of Justice
17 Environment and Natural Resources Division
18 Environmental Defense Section
19 P.O. Box 23986
20 Washington, D.C. 20026-3986
21 Tel: (202) 616-7501
22 Fax: (202) 514-8865
23 Email: michelle.lambert@usdoj.gov

24 Geoffrey L. Wilcox
25 Office of the General Counsel
26 U.S. Environmental Protection Agency
27 Ariel Rios Bldg. MC 2344A
28 1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Phone: (202) 564-5601
Fax: (202) 564-5603
Email: wilcox.geoffrey@epa.gov

1 38. This Consent Decree shall not preclude any right of action by a non-party to bring
2 a citizen suit pursuant to section 304 of the CAA, 42 U.S.C. § 7604, to enforce the non-
3 discretionary duties alleged in the complaint. In any such matter, EPA preserves all its defenses.

4 39. The undersigned representatives of each party certify that they are fully
5 authorized by the party that they represent to bind that party to the terms of this Consent Decree.
6

7 **IT IS SO ORDERED.**

8
9 Dated: _____

10 UNITED STATES DISTRICT JUDGE

11
12 COUNSEL FOR PLAINTIFFS:

13 Dated: August 25, 2011

14 /s/ Darin Schroeder (with permission)
15 Darin Schroeder (*Admitted Pro Hac Vice*)
16 Law Office of Robert Ukeiley
435R Chestnut Street, Suite 1
17 Berea, KY 40403
Tel: 859-986-5402
18 Fax: 866-618-1017
darin@airadvocates.net

19 *Counsel for Plaintiffs*

20 COUNSEL FOR DEFENDANT:

21 Dated: August 25, 2011

22
23 IGNACIA S. MORENO
Assistant Attorney General
24 Environment & Natural Resources Division

25 /s/ Michelle R. Lambert
26 Michelle R. Lambert
Trial Attorney
27 U.S. Department of Justice
Environmental Defense Section
28

P.O. Box 23986
Washington, D.C. 20026-3986
Tel: (202) 616-7501
Fax: (202) 514-8865
michelle.lambert@usdoj.gov
Counsel for Defendant